

Statement of Dylan Malone before the House Energy and
Commerce Committee
Health Subcommittee Hearing on "Current Issues Related to
Medical Liability Reform"
February 10, 2005, 1 p.m.

Mr. Chairman and Members of the Subcommittee:

Good afternoon and thank you for this opportunity to speak on behalf my son Ian, who died last May, never having spoken a word. The victim of medical negligence during a botched delivery, he did not live to see his fifth birthday.

Ian is not alone. Medical errors are one of the leading causes of death and injury in our nation. As many as 98,000 Americans die every year as a result of preventable medical errors according to a National Academies of Sciences Institute of Medicine study.

More people die from medical negligence and mistakes each year than from highway accidents, drunk driving, breast cancer and AIDS.

According to a 1997 University of Chicago study the number of injuries caused by medical accidents in inpatient hospital settings could be as high as three million and cost as much as \$200 billion.

But Ian was more than a statistic to my wife and I, he was our son. You never saw a more excited father-to-be than I was in the summer of 1999 when Christine was prescribed the drug Cytotec to induce labor, we didn't know that the drug's manufacturer warned against the possibility of serious brain damage if used by pregnant women, but our doctor did.

In fact, the drug is used in third world countries to induce abortions because it causes violent contractions. Every bottle of Cytotec shows a pregnant woman with a no sign drawn through her. To hide this from us the doctor gave us the pills in a simple brown envelope.

The Cytotec caused such unnaturally powerful contractions that Ian was literally smothered in the womb; they lost his heartbeat about 20 minutes before he was delivered. A

stillborn, his little body color was more grey than blue, and he had to be resuscitated.

Because Ian's health care providers falsified his chart to show a steady heartbeat throughout labor, made no mention of Cytotec, and listed him as breathing with a heartbeat at delivery, the intensive care unit had no idea of the severity of his injuries. This cover-up attempt probably made Ian's outcome even worse.

The resulting severe brain damage left Ian unable to swallow, so the secretions had to be suctioned from his mouth by machine. He was fed by way of a tube into his abdomen, and suffered from seizures and aspiration pneumonias. The insurance companies didn't want to pay for his care - they coldly suggested we put him up for adoption.

Eventually we set out to tell Ian's story to a jury. There was a settlement and we were able to provide the hundreds of thousands of dollars of care Ian needed every year.

I am committed to honoring his memory by fighting to improve the system for those who will come after him. I strongly believe that there are many things we can do to prevent many instances of negligence and medical errors.

I want people to know that medical negligence is a serious problem in this nation, and that instead of fixing it, President Bush wants to pass a law that would target all victims of medical negligence no matter how severe the injury or how horrible the care.

This is a very important point. The backers of this radical proposal to change medical malpractice in our country would hurt ALL victims - not just those who have so-called frivolous cases. It really offends me when I hear that word. I want the President to fix the health care mess and to stop blaming victims like my son Ian. My son's life was not frivolous.

Let's start with medical negligence and medical errors. The President wants to cap medical malpractice awards at \$250,000 - I say if we're going to have a cap - let us cap the number of people who suffer from medical negligence every year. It's a national scandal that as many as 100,000 people die from medical errors annually.

We didn't know it then, but the doctor who killed Ian had lost eight suits before we ever saw him, and he is still practicing medicine today. In fact, other children have been terribly injured or have died under his care since Ian's birth, largely because the medical board refuses to act on his license, for Ian's injury he paid only a \$1,000 fine. Of course, most doctors are highly skilled and care deeply about helping their patients. However, a small minority of doctors are causing the majority of the damage, and we have to deal with this life and death issue.

We also need to make sure that insurance companies don't gouge doctors for their medical malpractice insurance premiums. Doctors should only have to pay rates that are based on what the insurance companies have actually paid out in claims.

The bottom line is that I think it should be up to juries to decide whether a lawsuit shouldn't be in court. I trust juries, not the insurance companies and HMOs. We all should. It's one of our most valued rights as Americans.

People need to know that this debate is really about protecting our constitutional right to a trial by jury. And when they do, I don't think the American people will stand for this assault on one of our most fundamental freedoms.

Nearly 100,000 Americans die every year from preventable medical errors, that's the number we need to cap.

Thank you for allowing me to be here today.